

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
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DATE FILED: 5/12/2021

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DAMIEN REYES,

Plaintiff,

-v -

RIVERBAY CORPORATION,

Defendant.  
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1:18-cv-05092-GHW

ORDER

GREGORY H. WOODS, United States District Judge:

Trial in this case is scheduled to begin on May 19, 2021. Pursuant to Rule 43(a) of the Federal Rules of Civil Procedure, the recovery of a witness from a serious medical condition, compounded by the COVID-19 pandemic, constitutes a compelling circumstance and provides good cause to allow the witness (the “Remote Witness”) to provide testimony remotely via videoconference. Accordingly, after due deliberation, the Court is prepared to adopt the following virtual procedures which provide appropriate safeguards in relation to the remote testimony of the witness. Any party objecting to these procedures or who wishes to suggest alternate procedures shall do so by a letter submitted on ECF no later than Thursday, May 13, 2021.

IT IS HEREBY ORDERED THAT:

1. **Videoconferencing**. The Remote Witness shall provide testimony using the WebEx platform, which has been selected by the parties. The witness shall participate in appropriate pre-trial technology testing no later than May 17, 2021 and as may be required by further order of the Court.
2. **Submission of Exhibits**. The parties shall prepare two binders for the Remote Witness. The first binder (“Binder One”) shall be prepared by the party offering the witness. It shall contain all exhibits that the party offering that witness intends for the witness to discuss at trial. The second

binder (“Binder Two”) shall be prepared by the party opposing the witness. Binder Two shall contain all exhibits that the opposing party intends for the witness to view during cross-examination.

By no later than May 17, 2021, copies of Binder Two shall be provided to the Remote Witness as well as to opposing counsel. They shall be sealed and they shall, on the exterior of the binders, clearly instruct the witness and opposing counsel not to open the binders until directed to do so. The Remote Witness and opposing counsel shall not review Binder Two until the cross-examination begins.

A hard copy and USB drive of Binder One shall be provided to the Court on May 19, 2021. A hard copy and USB drive of Binder Two shall be provided to the Court on the same date.


3. **Remote Witness Testimony.** Rule 43(a) of the Federal Rules of Civil Procedure provides that, for “good cause in compelling circumstances,” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Having found that good cause in compelling circumstances exist here due to the recovery of the Remote Witness from a serious medical condition, compounded by the COVID-19 pandemic, the Remote Witness may testify by contemporaneous transmission from a different location than the Courtroom. The Remote Witness shall be sworn in over remote means, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was sworn in by the Court deputy in person in open court at the courthouse. The party offering the Remote Witness shall be responsible for ensuring that the remote technology and all exhibits from all parties are supplied to the Remote Witness in hard copy prior to trial. During the testimony, no person other than counsel may be present in the room from which the Remote Witness will testify during that witness’s testimony. While the Remote Witness is testifying, he or she may not have in the room from which the Remote Witness is testifying any documents except Binder One and Binder Two. The Remote Witness must connect to the trial using a computer equipped with a camera; he

may not access the trial using a phone or tablet device. Upon the conclusion of his or her testimony, the witness shall disconnect from the link.

4. **Courtroom Formalities.** Although the testimony of the Remote Witness will be provided using videoconferencing technology, the trial constitutes a court proceeding, and any recording other than the official court version is prohibited. No party may record images or sounds from any location. The formalities of a courtroom must be observed. When called to testify, the Remote Witness must situate himself in such a manner as to be able to view the video screen and be seen by the Court.

SO ORDERED.

Dated: May 12, 2021  
New York, New York

  
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GREGORY H. WOODS  
United States District Judge